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procedure gives a city wherein the light and power company is operating ample opportunity to be heard as to the justness and reasonableness of the rates charged.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 223, 224.]

Appeal from State Corporation Commission.

Petition by the Virginia-Western Power Company before the State Corporation Commission for permission to withdraw in the City of Clifton Forge electric light and power service or for a determination of adequate service and to fix rates therefor. From the order of the Commission, the City appeals. Affirmed.

O. B. Harvey, of Clifton Forge, for appellant.

F. W. King, of Clifton Forge, for appellee.

CITY OF RICHMOND *v.* CARNEAL et al.

March 17, 1921.

[106 S. E. 403.]

1. Constitutional Law (§ 38*)—Constitutionality Depends upon What May Be Done under Statute.—The test of the validity of a statute claimed to be unconstitutional is, not merely what has been done under it, but what may be done under it.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 180, 181.]

2. Eminent Domain (§ 66*)—Whether Land Is Taken for a Public Use Is a Judicial Question for the Court.—The question of the necessity, propriety, or expediency of resorting to the exercise of the power of eminent domain is a legislative function, in the absence of a constitutional inhibition, but the question of what constitutes a "public use" within the rule that private property can be taken only for a "public use" is a judicial question to be decided by the courts, not as a matter of discretion, but in the exercise of sound judgment under the facts and circumstances of a particular case.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

3. Constitutional Law (§ 52*)—Legislature Cannot Conclude Constitutionality of Its Statutes.—The Legislature cannot conclude the constitutionality of its enactments.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 150.]

4. Eminent Domain (§ 13*)—Private Property Can Be Taken Only for Public Use.—Under the Constitution, the power of eminent domain is limited to the taking or damaging of private property for public use.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Eminent Domain (§ 19*)—Statute Authorizing City to Acquire Land Additional to that Required for Street Held Unconstitutional as Authorizing the Taking for Other than a “Public Use.”—Acts 1916, c. 71, in so far as it amends Acts 1906, c. 194 (Code 1910, § 3065, par. 2), authorizing in street opening proceedings to acquire land in excess of that required and to replat and dispose of the excess in such manner as it may see fit, where such land is injuriously affected by the taking of a portion thereof for street purposes, held unconstitutional; the taking of such excess portion of the land not being for a “public use” within the Constitution limiting the taking or damaging of private property to a “public use.”

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Public Use. For other cases, see 5 Va.-W. Va. Enc. Dig. 78, 79.]

Error to Hustings Court of Richmond.

Petition by the City of Richmond to condemn land, opposed by James D. Carneal and others. Petition dismissed as to a portion of the land sought to be taken, and the city brings error. Affirmed.

H. R. Pollard, of Richmond, for plaintiff in error.

J. Thomas Hewin, Jas. T. Carter, J. Samuel Parrish, D. C. O'Flaherty, and *H. W. Goodwyn*, all of Richmond, for defendants in error.

TOWN OF GORDONSVILLE *v.* ZINN.

March 17, 1921.

[106 S. E. 509.]

1. Waters and Water Courses (§ 39*)—“Riparian Land” Must Be on Watershed of Portion of Stream in Question.—Land, to be “riparian” to a particular portion of a stream, must, as an essential condition, be located on the watershed of that portion of the stream.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Riparian. For other cases, see 10 Va.-W. Va. Enc. Dig. 342.]

2. Waters and Water Courses (§ 39*)—Land Opposite Point below Plaintiff’s Land Not Riparian to Portion of Stream above.—Where defendant’s land touched a stream both above and below plaintiff’s land, but the dwelling house was opposite a point in the stream below plaintiff’s land, and any surplus water from the dwelling house would return to the bed of the stream below plaintiff’s land, the dwelling house land is not riparian to the portion of the stream above plaintiff’s land.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 342.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.